

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION

REX SMITH, et al.

PLAINTIFFS

vs.

No. 1:00CV435-D-D

NEWELL OPERATING COMPANY,  
INC. d/b/a BERNZ-O-MATIC, INC.; and  
LOWE'S HOME CENTERS, INC.

DEFENDANTS

OPINION

Presently before the court is the Plaintiffs' motion to remand this matter to the Circuit Court of Lee County, Mississippi. Upon due consideration, the court finds that the motion should be denied because diversity jurisdiction exists pursuant to 28 U.S.C. § 1332(a).

*A. Factual Background*

The Plaintiffs are five individuals who allege that a torch designed and manufactured by Defendants Newell Operating Company (Newell) and Bernz-O-Matic, Inc., and sold by Defendant Lowe's Home Centers, Inc. (Lowe's), caused a fire on May 15, 1999, that destroyed the Plaintiffs' home in Blue Springs, Mississippi. The Plaintiffs filed an amended complaint against the Defendants in the Circuit Court of Lee County on October 4, 2000, alleging causes of action for, *inter alia*, negligence and strict products liability. The Defendants then removed the case to this court on November 3, 2000, asserting diversity of citizenship as the jurisdictional basis for removal. On November 14, 2000, the Plaintiffs motioned the court to remand this matter to the state court.

*B. Standard for Remand*

The Judiciary Act of 1789 provides that "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the

place where such action is pending.” 28 U.S.C. § 1441(a). Original federal jurisdiction exists “where the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between . . . citizens of different states . . .” 28 U.S.C. § 1332(a).

Once a motion to remand has been filed, the burden is on the removing party to establish that federal jurisdiction exists. De Aguilar v. Boeing Co., 47 F.3d 1404, 1408 (5<sup>th</sup> Cir. 1995). Here, the Plaintiffs assert that diversity jurisdiction does not exist due to a lack of diversity of citizenship. For the reasons set forth below, the court finds that the Defendants have met their burden of establishing the existence of federal diversity jurisdiction.

### *C. Discussion*

The Defendants removed this matter on the basis that complete diversity exists between the Plaintiffs and the Defendants, and that the amount in controversy exceeds the jurisdictional amount required by 28 U.S.C. § 1332. The Plaintiffs do not dispute that the jurisdictional amount in controversy requirement has been satisfied, nor do they dispute that all of the Plaintiffs are residents of either Mississippi or Tennessee. Also undisputed is the fact that the Defendant Bernz-O-Matic and its parent corporation, Newell Operating Company, are citizens of Delaware where they are incorporated. Newell is also undisputedly a citizen of Illinois where its principal place of business is located; and Bernz-O-Matic is undisputedly a citizen of New York where its principal place of business is located. See 28 U.S.C. § 1332(c) (“[A] corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business . . .”). Defendant Lowe’s is undisputedly a citizen of North Carolina where it is incorporated.

The Defendants further assert, however, that Lowe’s is a citizen of North Carolina, where its principal place of business is located, while the Plaintiffs argue that Lowe’s contacts with the State

of Mississippi make it a citizen of Mississippi for jurisdictional purposes, thereby rendering this court without subject matter jurisdiction due to a lack of complete diversity of citizenship between the Plaintiffs and the Defendants. Hence, the issue before the court is whether Lowe's principal place of business is in North Carolina or Mississippi.

The court must resolve this issue utilizing the analysis set forth in the landmark case of J.A. Olson Co. v. City of Winona, 818 F.2d 401 (5<sup>th</sup> Cir. 1987). According to Olson, courts in the Fifth Circuit must determine a corporation's principal place of business for diversity purposes by applying the "total activity" test. Olson, 818 F.2d at 404. In applying the total activity test, the court must make two separate inquiries: (1) the location of Lowe's "nerve center," and (2) the location of Lowe's "place of activities." Id. When considering a corporation such as Lowe's whose operations are far flung, however, the location of the corporation's nerve center is the most significant factor in determining its principal place of business. Id. at 411.

In determining the location of Lowe's nerve center, the court must identify the state in which Lowe's has an office from which its business is directed and controlled. Id. at 407. Here, Lowe's nerve center is undisputedly located in North Carolina. Its executive offices and corporate headquarters are located there, and its business is directed and controlled from that location. The Plaintiffs do not contend otherwise.

To ascertain the location of Lowe's place of activities, the court must determine the state in which Lowe's carries out its operations. Id. at 408-09. Lowe's is a large retailer of home improvement products with approximately five hundred stores located in twenty-eight states. It is in North Carolina, however, that Lowe's has its greatest number of stores, retail space, and employees. Specifically, Lowe's has eight stores in Mississippi with 1,096 employees, compared with

seventy-four stores in North Carolina with 13,000 employees. As such, clearly the activity in North Carolina is far more significant than the activity in Mississippi, or any other State. Lowe's place of activities, therefore, is predominantly located in North Carolina.

Further, Lowe's is a far flung corporation, as that term is defined by the Fifth Circuit in Olson, operating in over half the states of the United States. Consequently, the location of Lowe's nerve center is the most significant factor in determining its principal place of business. Olson, 818 F.2d at 411. Lowe's nerve center is in North Carolina, which is also the State where Lowe's most significant business activity occurs. As such, the analysis set forth by the Fifth Circuit in Olson dictates that North Carolina is Lowe's principal place of business. For purposes of this action, therefore, the court finds that Lowe's is a citizen of North Carolina, and complete diversity of citizenship exists between the Plaintiffs and the Defendants in this action.

In sum, the court finds that federal subject matter jurisdiction pursuant to 28 U.S.C. § 1332 exists in this case. The matter in controversy exceeds the sum of \$75,000.00, and is between citizens of different states. As a result, the court possesses subject matter jurisdiction to adjudicate this cause, and the Plaintiffs' motion to remand shall be denied.

A separate order in accordance with this opinion shall issue this day.

This the \_\_\_\_ day of January 2001.

\_\_\_\_\_/s/\_\_\_\_\_  
Chief United States District Judge

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ORDER

Pursuant to an opinion issued this day, it is hereby ORDERED that the Plaintiffs' motion to remand this cause to the Circuit Court of Lee County, Mississippi, (docket entry 6) is DENIED.

SO ORDERED, this the \_\_\_\_ day of January 2001.

\_\_\_\_\_/s/\_\_\_\_\_  
Chief United States District Judge